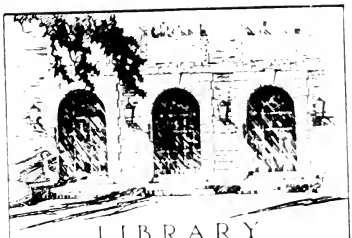

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HANDBOOK

OF

MARITIME RIGHTS,

AND

THE DECLARATION OF PARIS CONSIDERED.

BY

H. A. MUNRO-BUTLER-JOHNSTONE, M.P.

LONDON:
W. RIDGWAY, 169, PICCADILLY, W.

1876.

"MARITIME RIGHTS" are the title deeds of this country. Without them, an insignificant island in the German Ocean could never have attained its present height of greatness and of splendour. Deprived of them, it must infallibly relapse into a position of third or fourth rate importance.

It is for the people of England to say whether they will tamely submit to seeing their title deeds torn up before their eyes, or whether they will, without delay, take the steps necessary to restore them in their integrity.

H. A. M. B. J.

PREFACE.

At the end of the Great War (1815), it would have been a superfluous task to instruct the people of England as to the meaning of "Maritime Rights." Unfortunately it is no longer so. Sixty years of peace, interrupted only by wars, scarcely one of which can be dignified by the name of a Great War, have blunted the country's perception on this question. But should we ever be again overtaken by a serious war, it will not be long before the sense of what we once possessed and considered our most precious heritage will force itself upon the attention of the nation. It is no uncommon thing now-a-days to find even well educated politicians ignorant of the elementary questions involved in "Mari-

time Rights." It is for the instruction of such persons that I have written this short hand-book.

Should any one wish for more information on the subject, or should any important town in England desire to form a branch Committee of the Maritime League of Great Britain, I place myself at their disposal.

H. A. Munro-Butler-Johnstone.

5, Hamilton Place,
Piccadilly.

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THE DECLARATION OF PARIS

AND

MARITIME RIGHTS.

CHAPTER I.

Blockades.

To begin with, What is War?

War is a sentence of death and confiscation pronounced against your enemy for *refusing to do you justice*. War for any other motive, or on any other pretext, is the greatest of national crimes; and wars of ambition or aggrandisement are brigandage and rapine on a stupendous scale. War is

either the greatest of crimes or the most sacred of duties; and, when it is the latter, the man who talks of peace is either a traitor or a coward. The sentence of confiscation is the lesser right included in the greater, viz. that of putting your enemy to death, and to distrain his goods is the milder and more humane compulsion applied to him prior to the exercise of the right of killing him.

War on land is more terrible than war on sea. It includes occupation and annexation of your enemy's territory, the denationalization of his provinces (the greatest calamity which an independent people can undergo), and the striking at his capital, the heart of his empire and the centre of his government, which, when successful, puts an end to the war and brings him to terms.

War at sea, in the nature of things, can lead neither to occupation nor annexation, and consists solely in naval actions and bombardment of fortresses, and in compul-

sion applied to your enemy's commerce. This compulsion consists in two descriptions of measures.

(1) Blockading enemy's coasts and harbours.

(2) Seizing his goods at sea.

The first practice (blockading) has undergone a limitation by the practice of modern times and the Declaration of Paris.

Formerly an Order in Council declared certain ports or coasts blockaded, and all vessels *found on the high seas* bound for those ports or coasts were held to have broken the blockade, and were seized accordingly. According to the new rule (the IVth rule of the Declaration of Paris), a blockade to be valid must now be effective; that is, it must be effected by means of a blockading squadron off the particular blockaded coast or harbour, and must be so effective as to constitute a real danger to the vessels attempting to enter the ports in question. This new rule puts

an end to paper blockades, and what I should call ocean blockades, that is, blockades ordered in Council and effected by cruisers in the open sea. It consequently considerably limits the power of blockading at all times, and puts an end to it in the winter altogether in those seas (such as the Baltic and Black Seas), where no blockading squadron could maintain itself at that season.

This conventional limitation imposed by the Declaration of Paris is further increased by the improvements in the means of internal communication between nations, especially by the great extension of railways; for even where the whole coast of a particular country is effectually blockaded, the blockaded belligerent can transport his goods by land to the nearest neutral harbour (as the Russians did to Memel and Königsburg during the Crimean war), and there ship them on board neutral vessels, where they will be perfectly safe from

capture under the Declaration of Paris, at the simple inconvenience of paying the enhanced cost of transport, representing the difference of the distance of the place of produce from the neutral harbour as compared with its usual place of export. Prior to the Declaration of Paris, this would have availed him nothing, because his cargoes were seizable by the hostile cruisers the moment they left the neutral harbour, in whatever vessel they might be. In Lord Stowell's words (the concisest form of the expression of maritime belligerent rights), "enemies' cargoes "were seizable at sea, whatever the ships, "whatever the cargoes, and whatever the "destination." This ancient rule was repealed by the Declaration of Paris, which introduced instead of it the new rule that enemies' goods were safe in neutral bottoms, which is the maxim which I intend to examine at length in subsequent chapters. But before taking leave of the subject of

blockades I must notice some further pretensions on the subject put forward by neutral nations and by those whose manifest interest it is to cripple England's power at sea, and which, although not yet adopted, can be equally supported by exactly the same class of argument by which the Declaration of Paris is defended.

In the Berlin decrees of the First Napoleon, and in a circular of Count Beust, the pretension was raised that the right of blockading should be confined to *fortified places*, thus putting an end to commercial blockades altogether, and involving that larger pretension which I shall examine later on, viz., the immunity of all private property at sea.

But in order to clear the ground for the examination of the chief point on which we have to fix our attention (viz., the maxim of the flag covering the cargo) it may be as well to dispose of the 1st rule of the Declaration of Paris, which abolished

privateers, and to say a few words on this subject, which has really very little indeed, or rather nothing, to say to the main question, and has been, I firmly believe, purposely introduced into the discussion in order to confuse people's minds and prevent their arriving at a clear understanding and resolute determination on the main question.

CHAPTER II.

Privateers.

I have already said that the question of privateering has nothing to do with the real question at issue. The distinction between them is made clear by this fact. The question of privateering regards the belligerents only; if both belligerents agree to abstain from the practice, well and good; if either refuses, the other is *ipso facto* absolved from the obligation of abstaining. This is what happened the other day in the war between Spain and Chili. Chili had adhered to the Declaration of Paris, the first article of which abolished privateering—Spain had not. When war broke out between them, Chili re-asserted a

right which her adversary had never relinquished, and this re-assertion was acquiesced in by Spain and approved of by every other Government. In fact the other Governments had nothing to say to the matter; it in no way regarded them. But very different is the case when it is a question of the neutral flag covering the cargo. Then the rights of neutrals step in, and other Governments besides those of the belligerents have a voice in the matter. They will keep, and have a right to keep, the belligerent who has signed the Declaration of Paris to his engagement, by which it is their turn to profit, and by which he himself profited all the time he was a neutral, by driving a flourishing carrying trade with one or both of the belligerents. It is this distinction which clearly detaches the question of privateering from that far more serious question of the neutral flag covering the enemies' cargoes. *I* am not myself an enthusiast for privateering. I take no par-

ticular interest in the matter. I am not in favour of binding ourselves beforehand not to use this or that mode of naval warfare. It is for the interest, I believe, of a maritime nation like ourselves to use all modes of naval warfare, to put forth its naval strength in all directions, and all juggles by which modes of warfare are limited and crippled must turn out for the exclusive benefit of the weaker maritime belligerent. Privateering was in the last great war supposed to lead to abuses, and the sense of responsibility was believed to be not so strongly felt by the commander of a privateer as by that of a regular commissioned man of war. These abuses have, I believe, been exaggerated, and precautions of a stringent nature were certainly taken to enforce and strengthen this sense of responsibility. Owners of privateers were under heavy obligations to confine themselves within the limits of their commission. This commission was not "to kill, burn, and destroy," as ran the com-

mission of the officers of the Royal Navy, but exclusively to capture and bring into port captured vessels and cargo, there to be duly adjudicated on by the properly constituted tribunals (Admiralty Courts) of the country, and under no pretext whatever were they allowed to break bulk. Any violation of these obligations was severely and summarily punished, and commanders of privateers were required to find large pecuniary security for their conduct.

That these regulations were not always sufficient to restrain lawless men and to prevent abuses may be true, but has never been very clearly established. It clearly will not do to go for examples of excesses to the days of Captain Kidd and his compeers, for those were lawless days, and the exploits of these heroes can be matched by those of regular commissioned officers in those days. Buccaneering was then in vogue, and the code of honour of buccaneers was such as might be expected.

A very prevalent confusion of ideas on the subject of privateers has considerably enhanced the prejudice against them. It is often stated that letters of marque may be issued to individuals of *any nationality* to prey on the commerce of the enemy, or, at any rate, that an individual of the nationality of the belligerent may fit out a privateer in any neutral port, select his crew from sailors of any nationality, and set out with his letters of marque to prey on the commerce of the enemy. Nothing can be clearer than the law of nations on this subject. A vessel so fitted out is not a privateer at all, but a pirate, and its captain and crew, if captured, are clearly liable to the pains and penalties of piracy. The *Alabama* was a buccaneer pure and simple, and it was essentially the interest of England to recognize her, indeed to insist on her being recognized and viewed as such. Consider for a moment the consequences of the opposite doctrine. Accor-

ding to it, Switzerland, Bavaria, or any other microscopic inland state, having a quarrel with England or the United States, might declare war, and, whilst their geographical situation placed them beyond the reach of offensive operations from them, might send letters of marque to the cut-throats of every port in the four continents of the globe to prey on and destroy the commerce of their enemy. This is a conclusive *reductio ad absurdum*, I take it, of an assertion which is continually being made on the subject of privateering. It is highly important to prevent the slightest confusion on this matter. Privateering may be a good or a bad thing, but it is clearly quite distinct from buccaneering. Pirates, however, having been dignified with the name of privateers, it is not surprising that privateers should be stigmatized with the name of pirates, and the whole subject enveloped in a maze of prejudice and misconception.

If privateers were abolished, substitutes for privateering would immediately take its place. During the last war, Prussia was engaged in chartering large merchant steamers, arming them, and putting them under the command of naval officers, with a view of sending them out to prey on French commerce. The overwhelming superiority which she soon managed to establish over her enemy on land rendered any mode of naval warfare superfluous, and put an end to the device. Prussia fought the battle of her cruisers on land, for she imposed a contribution of 1,000,000 francs per occupied department, overtly as compensation for the mischief inflicted on her commerce by French cruisers. England could very easily charter any number of merchant steamers, convert them into cruisers, put them under the command of naval officers, and so find an effective substitute for privateers.

The question of privateers is therefore quite

a secondary question. It is unwise, I think, to make arrangements beforehand on this subject with foreign nations. Keep all your arms stored in your national arsenal. Don't part with any of them. If it is unnecessary or inexpedient in any particular war, according to the circumstances of that war, to employ a particular weapon, let it remain stored up until the necessity or expediency for using it arises. The day might come when some disaster to our regular military marine might endanger our very existence, and then it might become expedient and highly necessary to call into activity every privateer which the wealth of our private enterprise and the daring of our seafaring population could place at the disposal of the Crown. To limit or control or trammel that reserve power by convention or treaty with foreign nations seems to me unwise and impolitic; and when I remember that the Spanish Armada was defeated and England saved by a fleet

composed exclusively of privateers, I am at any rate unwilling to join in the unreasoning clamour raised against this particular mode of naval operations.

CHAPTER III.

The Right of Search.

The right to seize enemies' cargoes is often, though improperly, called "the right of search." This latter right is of course included in the larger right of seizure, but it is by no means co-extensive with it. Even if the right of seizure were abolished the right of search would remain, with a view to ascertain the ship's nationality, and also that she had no contraband of war on board. It has never been proposed to abolish the right of search, and as long as contraband of war is prohibited the right of search must remain.

A certain limitation of the right of search was proposed by the Powers who formed the second armed Neutrality of

1800, viz., that merchant vessels under convoy should not be searched; that the man-of-war under whose protection the convoy was sailing should be, as it were, a guarantee that no contraband was on board; and that a merchantman belonging to any one of the coalesced neutrals might put itself under the protection of a man-of-war belonging to any of the coalesced neutrals that it might chance to meet in the open sea, and that such convoy should be sufficient to protect it against search. England, however, refused to acknowledge this pretension, issued letters of marque against the coalesced neutrals, and within twelve months dissolved this armed neutrality. It is fair to state that, when peace was made, England made one concession to the armed Neutrality, viz., that merchantmen under convoy should only be searched by men-of-war and not by privateers.

It is sometimes, very incorrectly, stated that the war of 1812 with the United

States was brought about by the exercise on the part of this country of the right of search. No statement can be more absurd, and it is an instance, among so many, of the extremely loose way in which technical expressions are used, and patent historical facts perverted. The overt cause of war with the United States was the right claimed by this country of impressing English sailors found on board American vessels. That English sailors often took refuge under the American Flag to avoid impressment was notorious, but that the right claimed by this country was often very injudiciously exercised, and that *bona fide* citizens of New York and Boston were often impressed under the mistaken idea or pretext that they were Britishers, appears now to be acknowledged. The American Government did not deny that the English had a grievance, and they offered to redress it by a change in their municipal law if we would abandon our high-handed proceedings; but for many

years before this, between 1809 and 1812, many irritating discussions had taken place between the two Governments relative to the abuses of so-called maritime rights on our side and fraudulent evasions of neutral obligations on the part of the Americans, and in all these discussions, which are to be found at length in the official correspondence with the American Government during those years, not one word appears concerning the right of search. The real irritating topic was our paper blockades, by which we practically prohibited all neutral trade; and what greatly aggravated the feeling of irritation on the part of the Americans, as distinctly stated by the American President, was an exception to this general prohibition which we made in favour of *our own trade*, so that whilst forbidding neutrals to trade with our enemy we actually traded with him ourselves and enriched ourselves at the neutrals' expense. The Americans retaliated

on our Orders in Council by passing "Acts of non-intercourse" with us; and with France too, on account of her Berlin and Milan decrees (1806 and 1807) which forbade all trade with England and England's produce, and which were in fact the pretext and the alleged justification for our Orders in Council, which claimed rights beyond what the law of nations accorded us and were justifiable only as retaliatory acts. It is clear therefore that the right of search had absolutely nothing whatever to do with the war of 1812. It was the impressment of sailors which was the cause, working on ground already prepared by previous controversies on the subject of blockade. The right of search was a pretension and a right which the Americans acknowledged a few years before on so memorable an occasion that I cannot do better than refer to it.

On the 6th February 1778, the United States made a treaty with France, one

clause of which contained the provision that, as between these two countries, the Flag (neutral) should cover the merchandise (*i.e.* the enemies'). In 1794 they made a treaty of commerce and navigation with Great Britain, one clause of which contained expressly the opposite provision, viz. that, as between these two nations, the flag should *not* cover the merchandise. When the war broke out between England and France the English proceeded (not only by virtue of their express stipulation with the United States, but in accordance with the law of nations on the subject), to seize French goods on board American vessels; the French on the other hand, in consequence of their treaty with the United States, could not seize English goods on board American ships. The French loudly complained of this inequality, and quoted the "most favoured nation" clause in their treaty with the United States as a ground for claiming reciprocity of right in this matter. The

American President however, refused to recognize either the claim or the ground on which it was urged, stating distinctly that the English right was founded not on England's treaty with the United States but on the general law of nations, and was therefore prior to and independent of the provisions of the French treaty with the United States. These are the words of Jefferson —no partisan of this country. "Before "the treaty with Great Britain, the treaty "with France existed. It follows then that "the rights of England, being neither "diminished nor increased by compact, "remained precisely in their natural state, "which is to seize enemies' goods whenever "found. And this is the received and "allowed practice of all nations where no "treaty has intervened." Thus has the quarrel with the United States in 1812 (relative to a matter of municipal jurisdiction, the right of impressment, and not of international law at all), been, by an

ignorant or perverse confusion of terms, called a quarrel about the right of search, and as this term is often loosely used to express the right of capturing enemies' goods under the neutral flag, the current fallacy has arisen of supposing that the war of 1812 had something to do with the exercise of this latter right.

CHAPTER IV.

The Right of Capture.

The right of capturing enemies' goods on the high seas (which, as we have seen, is often improperly called the right of search) may be classed under three heads.

(1.) Where ship and cargo both belong to the enemy.

(2.) Where the ship belongs to the enemy and the cargo to a neutral.

(3.) Where the ship belongs to a neutral and the cargo to the enemy.

The first case has never yet given rise to any dispute, both ship and cargo being of course liable to confiscation, although a theory, which we shall have to examine later on, has been lately started to exempt all private property at sea from capture.

The second case has never justified the seizure of the cargo as a recognized maxim of international law, although an abuse of belligerent rights has often, as we shall see, claimed this right, and in all those numerous treaties in the 17th and 18th centuries in which the principle of "free ships free goods" was stipulated, the opposite or converse principle "enemies' ships enemies' goods" was likewise agreed upon between the contracting parties, as a set-off against the concession.

The third case (where the ship belongs to a neutral and the cargo to the enemy) involves the principal matter on which we have to fix our attention. Previous to 1854 the English practice (leaving out of account for the present the modifications introduced into our practice by treaty engagements which will form the subject of a separate chapter) was founded on the simple theory that enemies' property was seizable wherever it was found: in Lord Stowell's words:

"whatever the ships, whatever the cargoes, and whatever the destination," and that neutral property was under all circumstances to be restored, and the neutral subjected to as little loss and inconvenience as was consistent with the exercise of our rights over the enemy's property. For this purpose Admiralty Courts were established at our seaports, together with higher Courts of Appeal, for the decision of all cases in which neutral property was involved, and so delicate were we in dealing with neutral rights that the captain of the neutral vessel was entitled to the full amount of the freight which he would have earned by carrying the enemy's cargo to its port of destination had not the cargo been seized, and to demurrage too for illegal or unnecessary detention, amounting sometimes to the full amount of his freight.

No penalty was imposed on the neutral for carrying enemies' goods, except the discouragement inseparable from having

those goods liable to confiscation, and the consequent contingent loss of future freight. This equitable rule was laid down as early as the 12th century in a remarkable compilation called the "Consolato del Mare," a code of maritime laws compiled, it is supposed, by order of St. Louis of France, from the customs of the sea actually in usage among all the maritime states of the world, including the Hanse towns, all the Mediterranean States, Genoa, Venice, Barcelona, Cyprus, Jerusalem, &c. This code therefore was not a new law dating from this period, but the mere codification of laws of immemorial antiquity in usage among the maritime states of the world. It was this, and not the authority of St. Louis, which gave it its high sanction, together with the fact that its equitable provisions met with the approval of all the great jurists who wrote on the subject of maritime law. Its provisions hence became essentially entitled to the name of laws of nations.

It seems to me a convenient place to pause here a moment to inquire what is a law of nations, especially as it is a question very germane to our inquiry, and has been surrounded with a good deal of unnecessary confusion.

Laws of nations are of two kinds, according to the source from which they are derived: (1) Jura naturæ. (2) Those founded on Universus consensus gentium.

The first we may translate the law of common sense, the natural law founded on reason.

The second, the general agreement between the nations of the world.

It is sometimes considered that the second source is sufficient to constitute a law of nations; but it is evident that such a law might conflict with a still higher law, such as that of self-preservation, the first law of nature and of nations, and then it must yield to this higher law. A law merely founded on convention, however general the agreement, is a law of nations in an

inferior sense only. *A fortiori*, when the agreement is only partial, the term "law of nations" is not applicable at all.

But when a law is both agreed upon by common consent, and is in accordance with the highest natural law, and is so regarded by the great authorities on International Law, then it becomes entitled to the full dignity of a law of nations in the largest acceptation of the term.

The maritime code of the Consolato del Mare constituted the maritime law of nations in this highest sense. Not only for centuries were the rules there laid down accepted, without dispute, by all maritime nations, large and small, but all the great international jurists, Grotius, Vattel, Bynkershöek, Zouch, Heineccius, Azuni, Lampredi, Puffendorf, and Kent, approved of these rules on the highest grounds of equity. I shall consider this point more at length hereafter.

When modifications began to be introduced into the practice consecrated by the

rules of the Consolato del Mare, they were on the side of greater stringency and severity. England was the nation that departed least from the rules here laid down. Her general practice was for centuries in strict conformity with them, and, unless as exceptions introduced by Orders in Council, for a particular war, and as a particular exception, the rules of the Consolato were always recognized as *the* law of nations on the subject of maritime capture, and, as such, incorporated into the municipal law of England. France by means of her marine ordinances (having much the same force as our Orders in Council) overstepped the provisions of the law of nations (and therefore the rules of the Consolato) far more systematically than we did; and, so far from its being true that the French practice was milder and more humane than our own, the exact contrary was the case, as I shall proceed to show.

By a decree of Francis I. (1563), confirmed by another in 1584, all neutral trade

with the enemy was forbidden, the neutral vessel carrying enemies' cargoes was itself confiscated, and also the neutral cargo in an enemy's vessel.

The maritime ordinance of 1681 re-affirmed all these three extensions of what I may call normal belligerent rights as laid down in the Consolato del Mare.

By the marine ordinance of 1704 still further extensions were introduced in retaliation, be it said, of the Anglo-Dutch measures adopted by William of Orange against the power of Louis XIV. All articles of the *produce* and *manufacture* of the enemy's country on board a neutral were made seizable (although not entailing the confiscation of the neutral vessel itself as was the case with enemy's property).

The marine ordinance of 1744 modified the severity of these above mentioned rules, so that only enemies' property and produce were confiscated but not the neutral vessel.

And in 1773 a full return was made

to the provisions of the Consolato del Mare.

Here I will close the account of the French practice, because from this date began the policy dictated by the events (1) of the American War of Independence, and (2) of the French revolution,—in which exceptional feelings of animosity and bitterness introduced exceptional regulations, and threw considerations of equity and of law into the background.

But before taking leave of the review of French practice between 1543 and 1744, there is a very interesting incident to be recorded, worthy of attention inasmuch as it exemplifies the fact that the idea of a law of nations, independent of and superior to municipal regulations in conflict with that law, had not up to that date deserted the public conscience in France. The incident is this.—

The ordinances of 1543 and 1584 enacted, as we have seen, the confiscation of the neutral vessel as well as the enemy's

cargo. But the Parliament of Paris in 1592 adjudged the contrary (on the express grounds of international law) in the case of a Hamburg ship.

To sum up, we may divide the history of the law on the subject of marine captures into three epochs.

I. From the earliest times consecrated, not introduced, by the Consolato del Mare, up to the middle of the 16th century, when the equitable rules of the Consolato were never departed from.

II. From the middle of the 16th century to the American revolution, when the rules were frequently departed from for state reasons of policy, and as retaliatory measures, but with the tendency to return to the *norma* laid down in the Consolato del Mare.

III. From the period of the American revolution down to the Peace of Vienna, 1815, which I will consider in a future chapter.

CHAPTER V.

International Law and the "reason of the thing."

I have claimed the rank of International law in the highest sense for the provisions of the Consolato del Mare, as being founded on all the three necessary sanctions of such law, viz., (*a*) the reason and common sense of the thing; (*b*) the approval of the most eminent jurists; (*c*) the general consent of nations, when they were not under the influence of motives of state policy.

I wish to examine a little closely the first of these sanctions—the reason of the thing.

Nations at war with each other have been compared to individuals carrying on war with each other in the primitive condition of society. If I am at war with a man, I have no right to insist on any one taking my side in the dispute, but I have a right to insist on no one, who claims the privileges of neutrality, taking my adversary's side, which if he does, he violates impartiality and departs from neutrality. Now, if I am able to prevent my enemy from carrying his goods by sea, what right has a third party, calling himself a neutral, to step in and do for him what he is unable to do for himself? Not only this, but by his conduct he does me a double injustice, for he not only does for my enemy what my enemy is unable to do for himself, but thereby he enables him to increase, proportionately to the aid he receives, his means of offensive operations against me; for every sailor whom he lends my enemy to carry on his trade is a man subtracted

from his commercial marine and added to his military marine, which he is at liberty to use for the purpose of invading or otherwise injuring me.

But this neutral, it will be urged, has rights too and interests as well, and what right have I – from the fact of being at war with another nation—to interfere with his rights and affect his interests? Let us examine this objection a little closely.

With *some part* of his trade clearly the belligerent has a right to interfere, and this right of interference is not even contested; I mean his right to blockade and hermetically seal his enemy's ports, which is a very considerable interference with neutral trade. Again, his right to interfere with the neutral's trade in respect to contraband of war has never been called in question, a right accruing only in time of war, and in consequence of the state of war—for at any other time this trade of the neutral is perfectly innocent. So that the absolute-

ness of the objection falls to the ground, and the objection is reduced to pleading for the immunity of what is called the lawful trade of the neutral. As, however, the question of what the law should be is the very point in question, we are not advanced a step in the decision of the question as to whether the lawful trade of the neutral should or should not include the carrying trade of the enemy, a trade which the enemy would not be able to carry on himself.

That part of the trade of the neutral which consists (with the limitation as to blockades and contraband of war) in selling his own produce to the enemy and buying the enemy's produce in return for his own, is not interfered with by the old maritime rule which we are at present considering.

What the rule does forbid is that a neutral should undertake the carrying of the enemy's property, in order to enable him to carry on a trade which otherwise would be

stopped. And when we consider that the carrying trade of almost every nation is, in peace, carried on by itself, and that England is almost the only nation which has a carrying trade over and above the requirements of its own commerce, it is obvious that this claim to carry belligerents' goods is not a claim for the retention of a privilege which the neutral enjoyed in peace, but for the acquisition of an advantage which the neutral never even pretended to in peace. In a famous instrument in which neutral rights are put forward, it is said that "there is no "reason why the neutral should forego the "considerable advantage offered him by a "state of war between other nations." This pretension at any rate puts the matter in its true light. It is in fact a claim to *make profit* out of its neighbours' calamities, to coin money out of their blood, and reap a harvest from their misfortunes—a claim, when analysed, as preposterous and as monstrous as was ever put forward. And

remark that this modest pretension was put forward (by the author of the armed neutrality) in the very name of humanity and civilization, and on the pretext of mitigating the horrors of war!

The very utmost damage which a neutral sustains by the exercise of this right is the loss (or liability to loss) of that infinitesimal portion of the carrying trade of its belligerent neighbour of which it had the enjoyment in time of peace, a damage which would very frequently amount to zero. But even if it amounted to an appreciable loss, when rights come into conflict, the lesser right must yield to the greater, and against the neutral right to carry must be set the belligerent rights of nations at war perhaps for their very existence, and in defence, may be, of the highest interests of mankind.

And in such a war is it to be asserted that the neutral right to pelf is sacred and the neutral's obligations are imaginary?

The fact is we hear a great deal of neutral rights but very little of neutrals' obligations, and yet common sense and the conscience of mankind agree in laying down that, if there is any meaning in the term Community of nations, and if there are any duties which nations owe one another more sacred and binding than others, it is the obligation to endeavour to shorten the duration of wars, to reconcile by every means in their power the belligerents to each other, and studiously to avoid everything which could prolong the duration of hostilities. To acquire a vested interest as it were,—as Prussia did during the Crimean War,—in the prolongation of the war, to give "aid and succour" to one or both belligerents by carrying his or their goods, and so providing the sinews of war, is in direct and flagrant violation of the most sacred obligations of neutrality.

I cannot disguise from myself, and I do

not think I am travelling out of the record by insisting for a moment on this consideration, that the character of many, if not most, of the late wars in Europe has been such as to throw discredit on belligerents and belligerents' rights, and to invest with a credit and dignity, which by no means essentially belongs to them, neutrals and so-called neutral rights. Wars of aggression and of policy, thinly disguising motives of covetousness and brigandage, have been the general character of the wars that have taken place in our day. This fact seems to me to be that which has debauched the public conscience, and utterly confused the public mind, on the true character of war and neutrality. War is really either the greatest of crimes or the most sacred of duties, and, as I began this book by saying, the only possible justification of war (and then it is a complete one) is the refusal of your enemy to do you justice, in a matter judicially investigated and

pronounced upon by the highest tribunal of the land. If this were the character of all wars,—and I firmly believe it will henceforth be the character of all wars in which this country will be engaged—it is the rights of belligerents that would be invested in the public mind with the character of sacredness, and we should hear far less about the rights of neutrals. The rights of neutrals, as they are often put forward, are nothing more nor less than the wrongs of belligerents.

Before I dismiss this part of my subject I must shortly examine two arguments (if I may so call them) which are often put forward against the right of searching neutral vessels with a view to capturing enemies' cargoes.

(1.) It is said that the neutral vessel is part of the territory of the neutral nation, and therefore the belligerent has no right to violate it, any more than to land on the neutral territory and there seize the

enemy's goods. Ward reduces this argument to its simplest expression, which makes it a *reductio ad absurdum.* It amounts to this: because a (say) Swedish ship belongs to Sweden therefore it is not a ship at all but a part of Sweden. Again, if the neutral ship is to be invested with the territorial character, what becomes of the undisputed belligerent right to seize contraband of war on board?

The fact is that the power of locomotion of a ship invests it with a character which is peculiar to it, and its power of harbouring enemies' goods is a very different one from that possessed by the neutral's territory. A bale of cotton stored at Charleston is a very different thing from that same bale invested with locomotive power (by means of the neutral's ship) and going to Liverpool or Havre to be exchanged for money and the sinews of war.

(2.) It is said that no nation has a right to exercise dominion over the seas, which

the right of search and capture amounts to.

This is only the same verbal argument as the last and has to be met in the same way. I claim no dominion over the sea, I only claim to prevent the neutral from "aiding and succouring" my enemy;—and, if the reason alleged (absence of dominion over the sea) is good for anything, it is good to prevent the search for contraband —which is an undisputed belligerent right.

These arguments are in fact nothing but ingenious verbal quibbles, showing the straits to which our neutral friends are reduced.

CHAPTER VI.

Treaty exceptions to the Law of Nations.

With the exception of the famous Prussian Remonstrance of 1753, which I shall refer to in the next chapter, the principle that enemies' goods were seizable in neutral vessels was never challenged as a recognized maxim of international law, and even the armed neutralities, which we shall have to consider at the same time, were rather attempts to change the law by force, in the interest of neutral commerce, than to deny the principle of the law of nations, which was undisputed and indisputable.

This, however, did not prevent contracts being entered into between nations, by

which this principle was relaxed, as between the contracting parties. This very exception proves the general rule: we conceded a part of the advantage which the law of nations gave us for certain treaty benefits for which we stipulated in return. As Pitt said in 1800, "with "respect to the law of nations, the principle "on which we are now acting has been "universally admitted and acted upon, "except in cases where it has been re- "strained and modified by particular "treaties between different states. The "very circumstance of making an excep- "tion by treaty proves what the general "law of nations would be, if no particular "treaties were made to modify or alter it. "The question was whether we were to "suffer neutral nations, by hoisting a flag "in a sloop or a fishing-boat, to convey "the treasures of South America to Spain "or the naval stores of the Baltic to Brest "and Toulon."

I will now proceed to describe the manner in which it came about that this particular stipulation (that the neutral flag should cover enemies' merchandize) became incorporated in a great number of international treaties. But before doing so, I have four or five preliminary observations to offer on the subject.

I. No number of treaties can make a law of nations in the sense in which I have already defined a law of nations. At most it can only establish a "conventional law," and then only when *all* nations agree to it. If the Declaration of Paris were signed by all European nations it would then become a "conventional law of nations," but could never rise to the dignity of a "law of nations" in the highest sense. But these treaty stipulations by no means even amounted to a "conventional law of nations," for they only obtained between the contracting parties, and did not affect their relations with other powers. The

very same nations which made these contracts with one nation made others with precisely contrary stipulations with other nations. Thus France whilst stipulating in the Treaty of Utrecht (1714) with England and Holland for "free ships, free goods," made an exactly contrary stipulation with the Hanse Towns in 1716, with Hamburg in 1769, and with Mecklenburg in 1779, and left the matter untouched in her treaty with Portugal at the Peace of Utrecht, 1714. Again, Denmark stipulated for the new rule with France in 1662, and the old rule with England in 1670; and the United States stipulated for the new rule with France in 1778 and the old rule with England in 1794, as we have already seen.

II. If a law of nations were to be gathered from a consensus of stipulations in treaties, and if such a consensus as to the new rule could be (as I have just shown it *cannot* be) gathered from the treaties on the subject, then would the converse principle,

"enemies' ships make enemies' goods," *i.e.*, that neutral goods should be seizable on board enemies' ships, require to be equally erected into a maxim of international law, for it is remarkable that there is not a single treaty in which the former rule is stipulated for, in which (as a sort of practical compensation for the cession of undoubted belligerent rights) the latter is not equally agreed upon.

III. We shall find that although there were a great many treaties in which "free ships, free goods" and "enemies' ships, enemies' goods" were stipulated, there were a great many at the same time in which the opposite provisions, (*i.e.*, the old rule of the Consolato del Mare) were stipulated, and still more in which, nothing being stipulated, the old rule was acknowledged in default of express stipulation; and that the cases in which the new rules were agreed to were, generally speaking, divisible into—

(*a.*) Treaties with small nations, which we had a peculiar interest in attaching to

us, such as Portugal and the small Barbary States.

(*b.*) Nations which we particularly desired to detach from some hostile alliance by means of important concessions, like Holland, and who would be usually not neutral but either in alliance with or hostile to us, in both of which cases the concession would not injure us.

(*c.*) Nations usually at war with us—like France, when the concession would be, *ipso facto*, revoked on the first declaration of war; whereas we studiously avoided making this stipulation with those nations who habitually held to a neutral policy—like Sweden and Denmark in the Northern Seas, and Spain, Naples, &c. in the Southern Seas.

IV. As very few nations (none one may say) had a larger commercial marine—except England and Holland—than the necessities of their own commerce demanded, the stipulatiom was practically harmless and unmeaning, except in the cases of

England and Holland whom alone it affected.

V. The stipulation in question occurs far less frequently in treaties than is often stated and supposed, and this on account of a confusion which I wish to point out.

In the 16th century (as we have seen was the case in Francis I.'s marine Ordinance, and in those which succeeded it) the maritime nations often went beyond the equitable provisions of the Consolato del Mare, and not only forbade the neutral to undertake that part of the trade of the other belligerent which he did not possess in peace, but prohibited *all* trade with him. When subsequently in the two following centuries, 17th and 18th, commerce became more generally understood and of greater significance and importance, and commercial treaties began to be made between nations, it became customary to insert a clause mutually allowing "liberty to navigate freely without interruption," in time of war

as in time of peace ; and this clause, which was a renunciation of the right previously claimed and exercised to interdict all neutral commerce with one's enemies, has been confounded with a permission to carry enemies' goods. The distinction is manifest. Under the more sweeping prohibition a neutral could not buy for his *own use* a belligerent's goods, nor sell to him in return his own wares. Under the more restricted prohibition he could carry on this habitual trade, but he might not acquire the carrying trade of the belligerent for merchandize the property of the belligerent. And what clearly proves that it was this general trade alone which was allowed by the clause concerning "free navigation" inserted in these treaties, is that in some treaties a clause is found permitting "free navigation in time of war as in time of peace," side by side with another clause expressly prohibiting the carrying trade of the enemy. In the Treaty of

Upsal, for instance, between England and Sweden (Cromwell and Christina—Whitelock and Oxenstiern) it is expressly stated, "Lest such free navigation should be prejudicial to the confederate that is at war, *and lest hostile goods and wares should be concealed under the disguise of friendship*, and for removing all suspicion and fraud, passports and certificates shall be provided."

In the treaty, too, between Denmark and France, 1645, it is expressly stated that freedom of commerce is to consist in "*leaving things exactly* as they are" in both Western and Northern Seas.

Having made these preliminary observations on the subject, I will proceed to give an account of how this principle of "free ships, free goods" came into vogue.

It was Holland that became its champion and its sponsor. After the war ended by the Treaty of Munster, which secured their independence to the Netherlands, the

Dutch began to turn their minds exclusively to commerce and the acquisition of wealth. There were especially two points in their policy, to the attainment of which they bent all their energies.

I. That in peace no nation should grant to its own inhabitants any privilege in relation to freightage which Holland should not equally enjoy.

II. When any other nation was engaged in war, that they should enjoy, as neutrals, the right of protecting the commerce of its enemies.

If they could only attain these two objects they might hope to acquire the carrying trade of the world;—a trade which was the basis of their prosperity and the natural direction of their energies. No other nation (except England) had more shipping than was equal to the carriage of their own produce and manufactures, and the peculiar position and characteristics of the Dutch gave them particular advantages in the

competition for this trade of freightage. They had succeeded to the Hanseatic traders of the middle ages in the uncommon parsimony and industry of their race, which made them contented with smaller profits than other nations, and able therefore to outbid them in the cheapness of freights. As they had acquired all that they strove for by arms, and had little more which they could hope to acquire by war, and the size of their country excluded them from playing a great part in Europe, the acquisition of wealth, and the enjoyment of the profit arising from the dissensions of their larger neighbours, seemed to be the part which they were henceforth destined and fitted to play in Europe. The Regency therefore of Holland, under its great minister De Witt, laboured with all its might for the attainment of the two objects which I have described. Now the first object (viz., to secure the same advantages of freightage for Dutch subjects as for the natives of

other states) Colbert granted to Holland, and for the simple reason that under his regulations French manufactures throve better than French navigation, and it was for the interest of France herself to increase the facilities for her commerce by the lowering of freights.

And the second point (securing the carrying trade in time of war) the Dutch obtained from France by the 35th article of the treaty of 1662, between France and Holland. This was an immense triumph for Dutch policy and Dutch perseverance. It was not the *first* treaty recognition of the maxim which they obtained (for they had obtained it in 1650 from Spain, and in 1661 from Portugal), but it was the most important instance of their success. There remained England; and if only they could obtain the same success with her, their national fortune was secured. They strove hard to obtain it. As early as 1654, in a proposal for a maritime treaty between

England and Holland, Nieuport, the Dutch ambassador, pressed hard for this concession from Cromwell's Government, but, as might be expected, signally failed.

The way they eventually succeeded with England was this: — Louis XIV. had entered on his career of ambition, which it became the great object of policy on the part of England to curb. With this object it was important to detach Holland from the alliance with France, and Sir William Temple was commissioned in 1668 to effect this. He could scarcely succeed without making the same concessions to Holland which France had already made; indeed, from the importance that the Dutch statesmen attached to this particular concession, it was his chief weapon to employ, and accordingly in the treaty of commerce of the Hague, 1668, renewed in the treaty of commerce 1674, the 10th article conceded the principle of the neutral flag. Four years after the latter treaty, viz., in

1678, an offensive and defensive alliance was entered into between England and Holland, the first 12 articles in which were identical with the first 12 in the Franco-Dutch treaty of 1662—mutually guaranteeing their European possessions. And in 1716, at the Peace of Utrecht, both these treaties, 1674 and 1678, were renewed in so far as not contrary to each other.

But I must observe here that the offensive and defensive alliance of 1678 deprived the clause about the neutral flag in the commercial treaty of 1674 of all significance; because, as it stipulated that England and Holland should have the same enemies, Holland could not profit by it as a neutral; and this state of things, in fact, continued for 80 years, and when in the middle of the subsequent century, during the war of 1756, Holland, on a technical interpretation of the treaty of 1678, declined to aid England when attacked by France, and wished to remain neutral and profit by this clause about the neutral flag, England declared

the treaty of 1678 violated, and absolutely refused her the privilege accorded to the neutral flag in the treaty of 1674.

So that those who trumpet Sir Wm. Temple's great name as an abettor of this principle forget both the political object he had in view in making the concession, and the further treaty by which he hedged it round.

Just in the same way some people are audacious enough to use Cromwell's name for the same purpose, because he conceded this principle to Portugal, a little state with scarcely any marine, and one, such as it was, barely sufficient for her own commerce, forgetting that the sole object of Cromwell was political, making the concession of certain undoubted acknowledged rights in order to detach a maritime nation like Portugal from the alliance of her two neighbours, and in order to make a break in a long line of coasts belonging to nations habitually hostile to England.

This is the way the principle got ushered

into Europe—The Dutch obtaining it successively from Spain, Portugal, France, and England. Its introduction therefore was not as a natural right, nor a free grant made from a sense of justice, but established by way of bargain by countries stipulating for mutual advantages. It will not now surprise us that in a great number of treaties, from the middle of the 17th century to the time of the American revolution, this new rule was conceded. The matter, as investigated by Ward,* stands thus. Between 1642 and 1715, 12 treaties introduced the new rule, 7 expressly stipulated for the old rule, and in 31 no mention whatever is made of it, and therefore the old rule continued in force; and between 1715 (Peace of Utrecht) and 1780 (first armed neutrality), 20 treaties either conceded the new rule or renewed the 12 previous ones that did so, and 34 make no mention of it, thus maintaining the old rule.

* Ward's *Maritime Law*, edited by Lord Stanley of Alderley.

Thus we have 32 treaties acknowledging the new rule as against 72 maintaining the old one. And, as I have already observed, in every treaty in which the new rule is conceded, its converse, viz., that "enemies' ships should make enemies' goods" (*i.e.* that neutral goods should be seizable in enemies' ships) was likewise stipulated; and it was never so much as urged that a particular treaty, or any number of particular treaties, with particular nations, making a particular concession, could create a new law of nations, or change the old law of nations, *as* a law of nations, whatever exceptions to it they conventionally introduced.

I must observe that England never conceded the principle in any treaty with the Northern States, Russia, Denmark or Sweden. She maintained her maritime rights intact in the waters bordering on her coasts.

CHAPTER VII.

The Prussian Remonstrance of 1753.

In the last chapter we reviewed the exceptions to the common law of the sea introduced by special treaties between different nations. So far from being a challenge of the principle of the common law, these special exceptions were the best of all possible acknowledgments of the force of that common law where no treaties intervened. The only direct challenge to the principle itself took place in the middle of the 18th century, in a negotiation known in history as the Prussian Remonstrance, which ended in the signal defeat of the Remonstrants and the conclusive establishment of the English or rather

international rule. The following is the history of that famous Remonstrance.

Frederick II. had seized Silesia from Maria Theresa, and, by the Treaties of Breslau and Dresden, had taken over with this province certain debts secured on this province and owing to Englishmen. But on the ground that England had seized Prussian vessels engaged in contraband trade and taken enemies' cargoes out of them, the Prussian king refused to pay the Silesian indemnity until the counter claims of the Prussian subjects, who had sustained these maritime losses, had been satisfied. Upon this, the Duke of Newcastle, who was the English Minister, wrote a letter (founded on the report of a Commission issued to examine into these claims, on which Sir George Lee, Judge of the Prerogative Court; Dr. Paul, H.M.'s Advocate-General; Sir Dudley Ryder, Attorney-General; and Mr. Murray, Solicitor-General, sat) of so conclusive a kind that

Montesquieu called it a "*réponse sans réplique*," and it brought the negotiations to a close by the immediate payment by Prussia of the Silesian indemnity.

As the points established in this letter, and by the English Commission, are exactly points germane to our inquiry, I will proceed to state them in detail They answered to the several points raised by the Prussian Remonstrance.

I. That affairs of this kind are, and can only be cognizable in the courts belonging to that Power where the seizure is made.

II. That those Courts (of Admiralty) always decide according to the universal law of nations only.

III. That the cases complained of have been decided upon the rule prescribed by the law of nations—a rule clearly established by the constant practice of other nations and by the authority of the greatest men.

IV. No treaty can be a pretext for altering that rule.

V. As justice was not denied, and the complainants themselves did not appeal to the Higher Courts, there is no case for reprisals on the part of Prussia.

VI. The clear words of the Treaties of Breslau and Dresden demand the Silesian indemnity to be paid.

The first point, that affairs of prize can only be judged in the prize courts of belligerents, was long established by the custom of nations. There never was, nor can there be, any other equitable mode of trial. All maritime nations have, when at war, from the earliest times uniformly proceeded in this way, with the approbation of all the powers at peace. If justice is denied by the prize courts of a belligerent nation, or if its decisions are notoriously contrary to justice, then such a pretext is a just cause of remonstrance and even of war,

principle of the locality of prize courts had never been called in question.

2nd. As to the uprightness of the decisions of the English prize courts, they had always enjoyed the very highest reputation. The Duke of Newcastle points out (1) that the judges, especially the Commissioners of Appeal, were men of the highest legal reputation; (2) that they are bound to decide on the principles of the universal law of nations and particular treaties; (3) that in England the Crown never interferes with the judges, and never issues nor can issue orders to them; and (4) that they are independent of the Executive, and can only be removed by an address from both Houses of Parliament.

Apropos of the high character of the judges of the English High Admiralty Courts it is not out of place perhaps to quote here Lord Stowell's words pronounced in the case of the famous Swedish convoy, many years after this. "I trust it has not

" escaped my anxious recollection what it
" is that the duty of my station calls for
" from me, viz., to consider myself as sta-
" tioned here, not to deliver occasional and
" shifting opinions to *serve present purposes*
" *of particular national interest*, but to
" administer, with indifference, that justice
" which the law of nations holds out with-
" out distinction to independent states, some
" happening to be neutral and some belli-
" gerent. The seat of judicial authority is
" indeed locally here in the belligerent
" country, according to the known law and
" practice of nations, but the law itself
" has no locality. It is the duty of the
" person sitting here to determine this
" question exactly as he would determine
" the same question if he were sitting at
" Stockholm, to assert no pretension on the
" part of Great Britain which he would not
" allow to Sweden in the same circum-
" stances. If I state the law in this matter,
" I assert that which I consider, and which

"I mean should be considered, the universal "law on the subject."

These words may be taken as the authoritative exposition of the principles which ought to, and do, regulate the decisions of prize courts in England. The Duke of Newcastle goes on to cite a great number of treaties, between most of the European nations, recognizing the principle of the locality of prize courts in the belligerent's country; between England, France, Spain, Holland, and Denmark; and with respect to witnesses, appeals, reviews, &c.

The third point raises the whole of the questions which we have been considering in the previous chapters, as to what the law of nations is on the subject of the liability of enemies' goods to be captured in neutral vessels. From the year 1746 the Prussians had been engaged in the gainful practice of covering enemies' goods, and they now asserted their right to do so by the law of nations.

The Duke of Newcastle's answer is crushing on this head. He quotes chapter and verse of all the great writers on International Law on the subject, and I cannot do better than transcribe here the authorities he quotes:—

(1) The "Consolato del Mare." Cap. 273.

(2) Grotius de jure belli ac pacis. Lib. III. cap. I. sect. 5, note 4 citing the above (1) quotation, and also in his notes, L. III. c. 6. 5, 6.

(3) Vattel, L. III. cap. 7. "If any goods "belonging to the enemy are found on "board a neutral ship they may be "seized by the right of war, but the "freight must naturally be paid to the "master of the ship, who must not "himself suffer by such seizure."

(4) Bynkershöck, L. I. c. 14. "We "must rather consider reason itself "than treaties. I cannot see any cause "why it should not be lawful to take

"enemies' goods, though found in the "ship of a nation not at war; for I "consider it as the property of an "enemy, and belonging by the right of "war to the conqueror."

(5) Loccenius, de jure maritimo. L. II. c. 4, s. 12.

(6) Voet, de jure militari. C. 5, n. 21.

(7) Heineccius (a Prussian) de navibus ob vecturam vetilarum mercium commissis. C. 2, s. 9. (Perfectly clear and explicit on this head).

(8) Zouch, de judicio inter gentes. Pars II. s. 8, n. 6.

As to the fourth point the Duke of Newcastle goes on to say: "What I have laid "stress upon, on more than one opportunity, "is, that the general rule cannot be more "strongly proved than by the exceptions "which particular treaties have made to it."

The fifth point is an argument by itself. With reference to reprisals, the law of nations, founded on justice, equity, conve-

nience, and the "reason of the thing," and confirmed by long usage, only allows of reprisals in cases of violent injuries directed and supported by the State, and when justice is absolutely denied "in re minimè dubiâ," by all the tribunals and afterwards by the Prince. Cf. Grotius de jure belli ac pacis, L. III. c. 2, s. 4, 5; also the treaty between England and Holland, 31 July, 1667, Art. XXXI. "Reprisals shall not be granted "until justice is demanded according to the "ordinary course of law." Also the treaty of commerce of Ryswick, 20th Sept. 1697, between France and Holland, Art. IV. "Reprisals shall not be granted except on "manifest denial of justice."

The sixth point is the mere statement of a matter of fact.

I have already stated that this answer of the Duke of Newcastle was considered so conclusive that the Prussian counter-claims were withdrawn, and the Silesian indemnity paid.

CHAPTER VIII.

The Armed Neutralities.

The Prussian Remonstrance was a bold and audacious attempt to challenge the law of nations on the subject of the neutral flag. The armed neutralities of 1780 and 1800 must rather be considered as forcible attempts to change that law, by taking advantage of a concurrence of events which seemed to place England at the mercy of the armed confederates.

In the first armed neutrality of 1780, England had hardly emerged from a death grapple with her great revolted colony, in which, by the aid of France, assisted by the forces of Spain and Holland, that colony had all but achieved its independence.

This was the moment chosen by the northern confederates for putting forth pretensions in favour of the immunity of the neutral flag and of enemies' goods conveyed under its cover. Considering how completely Russia's commerce was at the mercy of English cruisers in case of a war with England, this could only be regarded as a bold and natural stroke of policy on the part of the ambitious Catherine, and so opportune that there was every prospect of its success. But the English statesmen of those days, in spite of the accumulation of foes, and of perils menacing England's very existence, never for a moment hesitated as to the line of conduct which English interests dictated to them. They defied the armed confederates, and issued letters of marque to prey upon their commerce, and when the Peace of Versailles closed the war and secured the independence of the United States, not one word was said about the neutral flag, nor a single concession made by England to

the pretensions of the armed neutrals. It is true that England was not in a position to resist the first armed neutrality very successfully by arms, but she absolutely refused to abate one single jot or tittle of her maritime rights.

It is very easy to show how the nations who composed this armed neutrality were urged solely by motives of policy and not in the slightest degree by principle, in the course they pursued, for Denmark, only four days before joining it, (*i.e.* on the 4th July), agreed with England on certain extensive additions (hemp and timber) to the list of contraband articles,—an agreement which four days afterwards she repudiated. Spain, one month before joining it, issued an order to her cruisers, distinctly ordering them to seize enemies' goods in neutral bottoms. And France, the year before (1779), seven months before joining, made a treaty with Mecklenburg (identical with one signed ten years before, 1769, with Hamburg), in

which it was stipulated that enemies' goods should be seizable in neutral bottoms. Moreover, within ten years of this first armed neutrality, there was not one nation which had joined it which did not turn round and adopt the exactly opposite maxims. Sweden, Spain, Russia herself! Portugal, Naples, Austria, and Prussia! And Russia actually (1794) quarrelled with Denmark—threatening war and ordering her cruisers to employ force,—because Denmark raised pretensions of not allowing her merchantmen, that were sailing under convoy, to be searched. But what perhaps best reveals the true motives of policy of the authors of the armed neutrality was that the Empress Catherine, who was at the head of it and the moving spirit in it, actually had no mercantile navy and no neutral navigation to protect, and consequently was least of all the Rulers in Europe entitled to promulgate a new law on the subject, in opposition to the senti-

ments and practice of the maritime States. But her policy was well grounded. By weakening the British navy, she hoped to remove a powerful obstacle to her own ambitious projects, and by committing the two Baltic provinces, Sweden and Denmark, to a quarrel with England, she was sure to place them in a state of absolute dependence on herself.

The second armed neutrality took place at a conjunction of affairs apparently equally favourable to such a combination. The success of France against Austria, and the desertion by Russia of the allies, the Emperor Paul becoming fascinated by Napoleon's genius, were events likely to check the public spirit of England, and to incline it to compromise its own rights. But such was by no means the actual result. Never did the spirit of the country rise higher than in 1800. Pitt, Grenville, and all the statesmen of the day, repudiated the principles of the coalition and defied its

authors, and issued letters of marque against the commerce of the armed neutrals, which soon was utterly ruined. So great a pressure did this exercise over the Russian proprietors, that it was the chief cause of the revolution, in which the Emperor Paul was strangled, and his successor Alexander obliged to sue for peace with England in the following year. On this occasion, Lord Nelson made a speech in which he stigmatised the maxim that the neutral flag should cover enemies' merchandize, and that ships under convoy should not be searched: "A principle so monstrous in "itself, so contrary to the law of nations, "and so injurious to the maritime interests "of the country, that if it had been per- "sisted in, we ought not to have concluded "the war with those powers whilst a single "man, a single shilling, or a single drop of "blood remained in the country." Pitt made use of stronger language still: "sooner "than yield the principle he would wind

"the flag round his body and seek his "glory in the grave."

At the Treaty of Amiens in the following year it was sought to make this matter a subject of treaty arrangement, but Lord Hawkesbury, writing to the English plenipotentiary at Amiens, said:—"His Majesty will never consent in a treaty of peace to place out of his hands those means which may be necessary to the security of his dominions in time of war."

In 1807 there was an attempt at a third armed neutrality, again under the hegemony of Russia. The battle of Friedland and the Peace of Tilsit had detached Russia from the coalition against Napoleon, and the Emperor Alexander proclaimed anew the principles of the armed neutrality of 1801. In the English counter-declaration against Russia the following words occurred :— "Those principles of maritime law it is the "right and duty of His Majesty to main- "tain against every coalition, and, under "the blessing of Providence, His Majesty

"is determined to maintain them; they "have at all times contributed essentially "to the maritime power of Great Britain." No hostilities actually ensued, and in May, 1809, the coalition was dissolved, its defeat being owing to the same causes which dissolved the second armed neutrality.

It is well worthy of remark that the moment this coalition was dissolved, Alexander turned round, as Catherine had done in 1793, and exceeded the measure of Great Britain's maritime pretensions, in confiscating not only enemies' (French) goods, but also the neutral vessels in which they were found, in all cases where more than half the cargo consisted of enemies' goods.

To carry on the history of the attitude assumed by the English Government in this important matter,—in 1812, in the English declaration in answer to the French demands—as to the terms of peace—it was said:—"By these demands (the neutral "flag covering the enemies' cargo), the

"enemy requires that Great Britain and all "maritime nations shall at his pleasure "renounce the natural and incontestable "rights of war, and that Great Britain in "particular shall surrender all the advan- "tages of her naval superiority."

And at the Congress of Chatillon, 1814, the English Plenipotentiary, Lord Castlereagh, had orders from his government not even to discuss the question of maritime rights.

Contrast the uniform conduct and determination of English statesmen between 1780 and 1815 (thirty-five years of warlike effort and dangers) with the conduct of the English Government in 1856. The short statement I have made, of the successive assertions and abandonments of the principles of the armed neutrality by their champions, will clearly show that no constant or uniform system has ever been founded on them even by their authors, much less by the Powers of Europe in

general; and instead of furnishing a permanent code of neutral laws, they have furnished nothing but fruitless indications of hostility to England, manifested at those periods only when it was supposed that such hostility might be exhibited with impunity.

CHAPTER IX.

The Crimean War and the Declaration of Paris.

Between 1815 and 1854 the only historical fact connected with maritime rights was Mr. Canning's refusal to ratify a treaty which Sir Charles Stuart had negotiated with Brazil, on the ground that a clause in it had stipulated that the neutral flag should cover the merchandize, which Mr. Canning, agreeing with all past English statesmen, considered prejudicial to British interests.

In 1854, when England and France declared war against Russia, it became necessary to issue instructions to the French

and English Admirals commanding joint squadrons in the Baltic and Black Seas, and negotiations between the two governments were opened with a view, if possible, that those instructions should be identical. M. Drouhyn de Luys, who was at that time Foreign Minister of France, gave, some years afterwards, in a paper read at the French Institute, an account of these negotiations. It seems that up to the last moment the English Government held out for the adoption of the British view of maritime rights, and would not yield to the utmost pressure of the French Government; and as late as the 25th March, Lord Clarendon made a declaration to a deputation of merchants engaged in the Russian trade, to the effect that England intended to adhere to the ancient rules of maritime law. But, at the last moment, three days after this, *i.e.* on the 28th March, a Cabinet Council was held, and it was decided to adopt the French view of the matter, and accordingly

an Order in Council appeared the next morning in which the following words occurred: "In order to preserve the com- "merce of neutrals from all unnecessary "obstruction, Her Majesty is *willing, for the* "*present, to waive a part of the belligerent* "*rights* appertaining to her by the law of "nations;" and a similar declaration was issued by the French Emperor.

Granting that it was desirable that identical instructions should be issued to the English and French Admirals, it is by no means so clear that the English Government, representing an essentially maritime Power, should have yielded in a maritime matter to its military ally; and it could have been shown that, however true it was that France had joined in the armed Neutralities, and that the first Napoleon had always considered the greatest blow that could be struck at England would be to deprive her of her maritime rights, yet that the French law on the subject, if one went

back to any period anterior to the great revolutionary period, was by no means different from the English law in the sense M. Drouhyn de Luys supposes; and that, if it differed from it at all, it differed in the sense of being more stringent; for, up to 1744, as we have seen, the French not only confiscated the enemy's goods but the neutral ship also which carried them, and they likewise confiscated the neutral goods found on board an enemy's ship; and it was plain that no law could be gathered from the French practice during the revolutionary period, nor from the Berlin and Milan Decrees, as these ordinances were notoriously directed solely against the maritime power of England, and were the result of caprice and violence, and not deductions from any principle at all. But as the maritime traditions of modern France were chiefly if not exclusively framed in connection with ideas of wars against England, it became a tradition with them that it was

for the interest of France to champion neutral pretensions and to deny the principle that enemies' goods were seizable in neutral bottoms. The French Government maintained therefore that the French law was that enemies' goods were safe in neutral bottoms, but that friends' goods were seizable in enemies' vessels; and they offered to give up the latter principle, if the English Government would yield the former. I must here remark that this was not a compromise at all, but a mutual surrender for the benefit of the common enemy. However, it appears that the English Government yielded to pressure, and accepted the French proposal for the duration of the war, it being well understood that they only waived their rights and did not abandon them.

The experience of the Crimean War was not favourable to the maritime policy which had thus been adopted. It was found that in spite of a pretty strict blockade of the

Russian ports in the Baltic, the Russians found little difficulty in bringing their produce, tallow, hemp, and flax, to Memel and Königsberg, Prussian ports near the Russian frontier (by means of the rivers Vistula and Niemen), and there embarking it on board Swedish and Prussian vessels, where, under the Order in Council, it was perfectly safe from capture. In this way the Russian producer was scarcely inconvenienced at all; he sold £10,000,000 a year to England instead of £11,000,000, and he was recouped by the additional price which the English consumer paid him for his slightly enhanced cost of transport; and the Russian rouble (the index of the rate of exchange between the two countries), remained during the whole period of the war at par, 38*d*. On Lord Clarendon's declaration to the merchants, on March 25th, it fell to 32*d*., but, on the Order in Council appearing, three days later, it immediately rose again to par.

The exports from the Prussian ports quadrupled and quintupled the amount at which they stood previously to the war, and this gainful trade to the Prussian merchants put all idea of a political and military alliance with the Western Powers out of the heads of the Prussian people. The business of neutrality was far too lucrative. These facts made a considerable impression at the time on the country, and Lord Albemarle in one house and Mr. Collier (now Sir Robert Collier) in the other moved resolutions recommending various measures for stopping this illicit neutral trade, by means of differential duties on Russian produce, certificates of origin, and retracting the policy of the Order in Council of March 28th, 1854. Nothing however in this direction was done, and the war was brought to an end, after two years' duration, not certainly by any pressure exercised on Russian commerce, but solely by the force of the allied arms at Sevastopol.

At the Conference of Paris in March, 1856, Lord Clarendon finally, at Count Walewski's invitation, surrendered the rights which had only been waived at the commencement of the war.

I will not stop here to inquire into the authority on which Lord Clarendon acted. The mystery which surrounds this point has never yet been cleared up. Certain it is that he said himself in the House of Lords, on Lord Colchester's motion on the subject, that he and his brother plenipotentiaries "had not confined themselves to the "strict limits of their attributions."

But I will say a few words on the legality of his act. True it undoubtedly is that the Crown can make treaties with Foreign Powers without the previous consent of Parliament. It is one of its undoubted prerogatives. But there is a constitutional limit to this power, and that is that it may not make a treaty in violation of a municipal law of the country. In exemplification of this I may

cite a case which arose in connection with the treaty of commerce with Austria in 1833. An Austrian vessel from some port on the Danube arrived in the Thames with a freight sanctioned by that treaty, and it was immediately seized by the Custom House officers for violation of the Navigation Laws; and the particular clause of these laws which had been infringed had to be repealed before the treaty was allowed to operate. Now, it has been frequently decided that the law of nations is part of the common law of England, and maritime law a part of the law of nations, therefore maritime law is a part of the law of England,* and therefore cannot be altered without the consent of Parliament. Treaties which involve supply or taxes, or *an alteration of the municipal law of the land* require the consent of Parliament. These are preliminaries which are necessary to

* Blackstone distinctly states that maritime law is part and parcel of the law of England.

make even a formal treaty binding; how much more an informal declaration!

Now if we compare all the safeguards which our Constitution provides against hasty and improvident changes in our smallest municipal law, with the hastiness and improvidence which marked this fundamental change in a vital matter governing our external relations, we shall see the more reason for a careful review of the whole subject. For this declaration affected to reverse the law and practice of the land without the consent of Parliament, and to turn its back on the traditions of the country without the country ever having been consulted in the matter. Never was an act of such stupendous import committed with such secrecy and precipitancy.

The reasons given for it were as trumpery as the step itself was grave. In the protocols two reasons were assigned; I. That uncertainty on the law of nations existed; II. That it was desirable that uniformity

should be established. As to I., it was untrue; no uncertainty at all, as I hope I have clearly shown, existed as to the law of nations on the subject, although many nations, in their practice, went beyond, and so violated—deliberately—the law of nations. And as for II., however desirable it might be to establish uniformity, uniformity has not been established, as Spain and the United States both decline to sign the declaration and give up the right of using privateers.

In the debates in Parliament, other reasons were assigned, viz., that we could not maintain these maritime rights against the "intense anxiety of the neutral nations "that we should not," and especially against the attitude of the United States in the matter. The purely military nations may, I think, be dismissed from consideration; as they are powerless on the sea, this argument, founded as it is on an implied menace of power, cannot apply to them. With

respect to the United States, they are really out of court in imposing obligations on us which they have refused to accept themselves, and, whatever complaints we may have had to urge in our dealings with the United States Government, it has never shown a tendency to disregard well-established legal principles. On the contrary, in their conduct in 1798, in spite of their well-known sympathies with France, they declined to refuse to England rights which were secured to her by the law of nations, or to allow to France rights which she had deliberately surrendered by treaty. "The desire of establishing universally the "principle that neutral bottoms make "neutral goods is perhaps felt by no nation "on earth more strongly than by the United "States. Perhaps no nation on earth is "more deeply interested in its establish- "ment. But the wish to establish a "principle is essentially different from a "determination that it is already established.

"The interests of the United States could "not fail to produce the wish; their duty "forbids them to indulge it when decided "on mere right." Such were the memorable words of Jefferson in 1798. The war of 1812 had nothing whatever to do, as I have shown, with this matter; and it is contrary to the whole tenour of the conduct of the United States Government to suppose that they would go to war with this country for the possible establishment of a maxim contrary to the recognized law of nations.

But it is a new maxim of English policy for English statesmen to give up essential principles of British interest, founded on the recognized law of nations, in obedience to a nervous dread of offending neutral nations. The history of a people with whom such motives are allowed to operate is already ended.

I ought to state, before concluding this chapter, that the reason assigned by the

United States for declining to adhere to the Declaration of Paris is not any objection to the 2nd, 3rd, or 4th Rules, but to the 1st Rule, viz., that which abolishes privateering; and England's adhesion to the other points was conditional on this first point being accepted; it being decided at the Conference that the rules must be accepted "en bloc" or not at all. The United States offered to agree to them all, if an addition were made to them, to the effect that all private property (ships and cargoes) at sea should enjoy the same immunity in time of war as in peace.

CHAPTER X.

Consequences of the Declaration of Paris.

I think it can be demonstrated that a final adoption by this country of the Declaration of Paris would not only be fatal to its maritime supremacy, but destructive of its very existence.

I will not confine myself to quoting authorities on this matter, but I will fortify those authorities by arguments drawn from the reason of the thing.

As for authorities, I claim the whole muster-roll of English statesmen from the time England became a maritime nation until Lord Clarendon put his signature to the Declaration of Paris.

Lord Eldon said—"The right of searching neutral vessels originated in the rights

of nature, and no convention nor treaty can permanently destroy that right."

Lord Nelson—"A proposition (that the neutral flag covers enemies' goods) so monstrous in itself, so contrary to the law of nations, and so injurious to the maritime interests of this country, that if it had been persisted in we ought not to have concluded the war with these Powers whilst a single man, a single shilling, or a single drop of blood remained in the country."

Pitt said—"Rather than concede this principle he would wind the flag round his body and seek his glory in the grave."

Lord Heytesbury—"His majesty will never consent to place out of his hands in a treaty of peace those means which may be necessary for the security of his dominions in time of war."

Lord Liverpool—"The enemy requires that Great Britain should renounce all the advantages of his naval superiority."

Sir John Mc'Neil—"The right of search

and capture, which constitute the maritime power of England."

The same—"The right of search is a providential weapon placed in the hands of England for the protection of the weaker States."

Lord Stratford de Redcliffe—"Did not believe that Russia would have engaged in the Crimean war if she had not been assured beforehand that we should not use our maritime rights."

Lord Derby—"The day will come when you will wring your hands for having allowed yourselves to be bound by this fatal Declaration."

Lord John Russell—"In all books upon the subject it is stated that the rule that free bottoms make free goods has always been regarded as injurious to the supremacy of maritime nations, and especially to the maritime power of England."

Mr. Disraeli—"You have given up the cardinal principle of your maritime power."

Mr. Mill—"We have given up our main defence. Unless by resuming our natural and indispensable weapon we shall be burdened with these enormous establishments and onerous budgets for a permanency; and in spite of it all we shall be for ever in danger, for ever in alarm, cowed before any Power capable of invading any part of our widely spread possessions."

And now for the reason of the thing In the first place it is evident, and acknowledged on all sides, that the very first consequence to this country of a war in which it shall be engaged will be the absolute destruction of its carrying trade, and that the mere rumour of war will tend in the same direction. Mr. Beazley, a large shipowner, pointed out to a committee of the House of Commons, charged with examining into questions concerning the merchant service, that on the mere apprehension of war between England and France in 1859, second class American vessels were char-

tered in the Chinese seas at 50 per cent. higher freights than first class English vessels, which could not obtain cargoes at all. Nor is any testimony required to prove a matter so obvious. Cargoes being seizable in English vessels and safe in neutral vessels, no shipper would be so insane as to ship in the former when he could get the latter to carry his merchandize.

Now, what is the meaning of our carrying trade departing from us? Our mercantile marine consists of 37,000 vessels, representing an aggregate of between 6,000,000 and 7,000,000 tons. These vessels would necessarily be laid up in dock, or sold to neutrals if the war lasted long enough; and the carrying trade having left us in war, it by no means follows that it would return to us in peace. It is very difficult to coax trade back from channels to which it has become accustomed. The carrying trade has never returned to the United States since the

depredations of the "Alabama" took it out of their hands. But if our merchant ships could be laid up in dock, our merchant seamen could not afford to starve, and they would nafurally transfer their labour to the carrying neutral; and thus the services of our merchant seamen, the backbone and reserve of our military marine, would be permanently lost to this country, and our maritime power dried up at its source.

This destruction, therefore, of our carrying trade is not a mere commercial loss: not the mere destruction of one very important branch of British industry; but a blow struck at the very root of our national greatness.

Do the people of this country realize to the full what the destruction of England's maritime power really means? We have, practically speaking, no standing army; our volunteers, brave and devoted as they are, could not stand up half an hour against a regular army; we have no chains of im-

pregnable fortresses, no mountain passes, no natural fastnesses. Our whole reliance has hitherto been on the sea; but from the moment that we lose the command of the sea, and yield up our supremacy there, that which formerly was our surest defence becomes the chief source of our danger, and we become exposed to invasion, and consequently destruction, along the whole periphery of our coasts. To defend England (to say nothing of India) territorially, without the command of the sea, is a simple strategical and military impossibility. A continental army, constituted as continental armies now are, would cut through this defenceless island as a knife cuts through a pat of butter.

This consideration seems to me conclusive. It is a mere bathos to point out other consequences which must follow from adhering to the Declaration of Paris. But it may nevertheless be interesting to trace out some of the secondary consequences which must ensue. It used formerly to be well

understood what war with England meant. It meant the absolute ruin of our enemies' commerce. "A month after war is declared our commerce is absolutely at your mercy," said Talleyrand to the English plenipotentiary at the Congress of Chatillon.

This was the secret of England's influence on the Continent—an influence out of all proportion to her military strength or the numbers of her population. By this she reached the secret springs of action of every Cabinet in Europe. "Nobody cares what England wishes since she gave up her maritime power," said Prince Bismarck during the Schleswig-Holstein negotiations; and the influence of England in all the different political events since that time proves the accuracy of Prince Bismarck's estimate. How could it be otherwise? Not only is compulsion applied to her enemies' commerce England's main resource in war, but it is the sole sanction of her power. But for it not a victory at sea would she ever have won. It was not from *gaité*

de cœur, or for the fear of being sunk, but to defend his commerce that the enemy left his ports and gave battle to our Nelsons, St. Vincents, Camperdowns, and Howes. Once this is no longer necessary, once his commerce is safe and snug under the neutral flag, he remains like the Russian behind his granite walls, or like the Prussian entrenched behind his lines of torpedoes. Give up the power of distraining your enemies' goods at sea, and renounce at the same time the hope of adding another name to the list of your naval victories. When there is nothing to be gained by fighting, your enemy is not likely to run his head against your iron walls. It comes to this: The Declaration of Paris abolishes war at sea, and leaves the arbitrament of war to the decision of big battalions—a comfortable prospect for the great military empires, but a doleful outlook for maritime Powers, and especially for England.

CHAPTER XI.

Sparing all Private Property at Sea.

We have seen that the United States offered to adhere to the Declaration of Paris "en bloc" provided the immunity of all private property at sea was added as a fifth rule. This proposal has met with many advocates in England. Their argument is this: the principles of the Declaration of Paris, as it stands, are demonstrably fatal to the naval superiority, to the carrying trade, and the mercantile marine of this country; England is the great carrier of the world, and it is in her capacity as a carrying nation that she would be utterly stricken in a war. Exempt mercantile

ships from capture and she will be able to carry on her vast trade, the carrying trade included, as securely in war as in peace, her commercial resources will remain intact, and she will consequently be able to bear the strain of a war uncrippled by financial distress. As matters stand at present, you have either gone too far or not far enough. Your enemy's commerce will sail under the neutral flag. *His* only sacrifice will be the carrying trade, and, as yours is the only large carrying trade in the world, his loss in this respect will be borne with a light heart. It will even profit him for warlike purposes, inasmuch as the sailors who manned his mercantile marine will be set at liberty to man his military marine, so that for military purposes he will actually be in a better position than if the neutral flag did not procure immunity to his cargoes. You on the contrary have an enormous mercantile marine, 37,000 vessels representing 6,000,000 or 7,000,000 tonnage,

and this will be the measure of your sacrifice during the war, not to speak of your chance of losing it altogether; for it by no means follows that once lost your carrying trade will return to you after the peace. Commerce has a tendency, once it has taken certain lines and channels, to adhere to them, as witness the permanent loss to the Americans of their carrying trade, caused by the depredations of the "Alabama," the "Florida" and the "Shenandoah." As you have taken a fatal step in signing the Declaration of Paris, take another step which will land you in comparative safety.

I think I have stated fairly the arguments of the exponents of this theory. I will begin by granting all they contend for, and I will ask, does it not amount to this: "There shall be no more war upon the sea, where we have always been strong, but only on land where we must be necessarily weak;" for the moment such a principle is granted there can be no more such a

thing as naval warfare. In fact, during the last two wars naval warfare was suspended. The Russian fleets remained behind Cronstadt or were sunk in the Sevastopol roadsteads, and their crews fought on land in the entrenchments. In the Franco-German war, the marine particularly distinguished itself for its discipline and courage, not in the element which was theirs, but in the villages of Beaumont and Bazeilles, and in the armies of Chanzy and Faidherbe. Now to put an end to naval warfare is to deprive England of her appropriate arm; that arm in which she has hitherto been supreme, and by the use of which a small island in the German Ocean acquired colonies, riches and power out of all proportion to its size or the number of its population. If England yields up the instrument by which she acquired this position, is it possible that she will be able long to maintain the position? It is as if a nation were deliberately to tear

up its own title-deeds. From that of a first-rate maritime, it descends at once to the position of a fourth-rate military Power, with the capacity of putting in the field an army of about the size of that of Servia, and with all the obligations of Empire still incumbent upon it. It is a fact, which the English War Office will scarcely venture to contradict, that, at the crisis of the Franco-German War, when it was a matter of importance to ascertain the exact amount of our available military force, the English Government ascertained that there were no means of putting 20,000 men into the field.

Next, let us look at the principle on which this theory rests. War, being the "ultima ratio" of nations, must be prosecuted until one or the other of the combatants gives in; this means, the principle of war on commerce being surrendered, until a sufficient number of men are killed, maimed, and wounded, so as to render resistance on one side or the other hopeless.

And whilst this game of slaughter is going on, whilst thousands and thousands of our countrymen are being killed off, the merchants and shipowners of England are to be driving a roaring trade and coining money out of the blood of their countrymen. Is it very likely that the common sense and common feeling of the people of any country would submit to this? The principle that the neutral flag covers the merchandize enables the neutral to make a profit by the blood of the belligerents, and so divides the interests of the community of nations, which is not the least of the objections against it. But this proposal divides the nation itself into two sections, and enables one-half of it to fatten on the blood of the other half.

This "free-trade in war," this commercial peace and military war, has been denounced and repudiated by every statesman who has expressed an opinion upon it. "There is "no such thing as war for armies and peace "for commerce" said Lord Kenyon. In

almost the same words, Sir Wm. Scott (afterwards Lord Stowell), said: "A mili- "tary war and a commercial peace is a thing "not yet seen in the world." Mr. Disraeli remarked that "he could see great cala- "mities following the admission of such a "principle. It might make rich communi- "ties but it could not fail to make weak "nations; and a country that adopted it "might disappear in a way that it might be "difficult for some people to conceive." Lord Palmerston, who went down to Liverpool in 1856 and made a speech, in which he seemed to lend countenance to the advocates of this principle, by saying that he hoped to see the principle of the Declaration of Paris still further extended, frankly avowed, in the debate in the House of Commons, that "he had changed his mind on the subject." This was six years later, on the occasion of Mr. Horsfall's motion. "With reference to the assimilation of the "principle of war at sea to the practice of

"war on land, I am perfectly ready to "admit that I have entirely altered my "mind on that point. Further reflection "and deeper thinking have satisfied me, "that what was at first sight plausible—and "I admit that it was plausible on the sur- "face—is a most dangerous doctrine, and I "hope honourable Members will give "weight to my thoughts. A maritime "nation ought not to give up any means of "injuring its enemy on the sea."

I may here be allowed to remark that, if Lord Palmerston (on a subject of such primary interest to his country, and one so closely akin to the subject of the Declaration of Paris, that, with it, it can only be considered as part of a great whole), changed his mind between 1856 and 1862, his authority, as the person chiefly responsible for the Declaration of Paris, is very much diminished. The change of opinion and the avowal of it were highly creditable to his candour, but the necessity for it is a

reflection on his judgment in the first instance. And it is scarcely too much to argue that yet further reflection and deeper thinking might have induced him to revise his opinions on the whole subject, and retract his "hasty and improvident" assent to the Declaration of Paris.

To conclude my authorities on this question. The Solicitor-General said in the same debate (1862), "if there be any prin-"ciple of the law of nations more cardinal "than another it is that the people are "identified with their Governments, and "that you cannot have peace with the one "and war with the other, that in fact the "people are bound up with their Govern-"ment and the public interest of the nation "for better or for worse." The Lord Advocate said:—"The principle of all war was "the denial of the rights of property to a "belligerent enemy. That was one of its "essential ingredients."

War, in fact, is a declaration of dis-

traint and death against your adversary, and you distrain his goods before you take his life. To give up the right of distraint is to necessitate the greater use of the right of killing, and, as John Stuart Mill said: "He was at a loss to conceive how "humanity was advanced by sparing "people's property and shooting at their "bodies." And yet this principle of the immunity of private property at sea is constantly supported on the very grounds of humanity and civilization. Other abstractions are also pressed into the service, and the interests of commerce are invoked, as if commerce could have interests apart from commercial people!

Before concluding, there are two arguments used in support of this thesis which I feel bound to consider. One is, that it is the interest of England to support the principle, because, our commerce and our carrying trade being the largest in the world, we present "the largest area of

vulnerability." Now this argument is equivalent to saying that a big man ought not to fight a little man because his "area of vulnerability" is greater than that of the little man. True, his "area of vulnerability" is greater, but his striking power is proportionately greater too. So, in a commercial war, English commerce would no doubt suffer, but the enemy's commerce would be annihilated.

England is like a big company competing with and beating down a little tradesman; it can afford to lose two sovereigns to the other's one, and notwithstanding, to ruin him and force him to shut up shop; and, as the case in question supposes legitimate reasons of war between them, England would be justified as well as wise in accepting the conflict. To think that we can make war and suffer no loss is to suppose that one can make omelettes without breaking eggs.

The other argument is founded on a false

analogy. It is said that private property is spared on land in war, and therefore it ought to be spared at sea. I will not stop to dispute the fact, although it would scarcely be beside the question to ask whether the villas and gardens around Paris were spared by the Prussian army, or the private property of the Southern States by Sherman's troops in his famous march, any more than in Westphalia in the time of Turenne, or in the campaigns of the great Napoleon. But, even if the fact was as the argument audaciously assumes, I answer, the reason would be that there is on land a means of legalized plunder, viz., the local government of the country, of which the invader immediately possesses himself, and thus grasps the taxes and contributions of the people in a way which is impossible at sea; and, if he abstains (which it is quite an assumption to say he does) from indiscriminate plunder, the abstention is in his own interest and for his own benefit as no

consideration can be of such paramount importance to him as victualling and supplying his troops, which the wholesale destruction of private property would render impossible. Moreover the whole argument is founded on a false analogy. War on land means the invasion of enemy's land, followed often by the permanent conquest of his provinces;—this is the essence of war on land, it can mean nothing else. But this, from the nature of the case, is impossible at sea. There is nothing there to invade and nothing to conquer. If therefore warfare at sea is to follow the exact analogy of warfare on land, there is absolutely nothing whatever for it to do. But if invasion is of the essence of military war, banishing enemies' commerce from the sea, or seizing it "*in transitu*," has always been of the essence of naval warfare; and if you wish for a true analogy, and are bent on abolishing naval warfare, put an end at the same time to military warfare,

and make invasion and conquest illegal. Only, to do this, you will have to deal with people who are not carried away by abstractions and who do not found their State policy on plausible analogies.

CHAPTER XII.

Conclusion.

I have now gone through the principal points connected with Maritime Rights. I will conclude by enumerating some of the current fallacies that we constantly hear propounded on the subject. They may be termed *eidola maritima*, and are divisible into:—

1. The *eidolon vulnerabile*, viz., that "our area of vulnerability" is so great that we must necessarily suffer more than our enemy by maritime captures. I have, I think, dealt fully with this idol in the last chapter.

2. The *eidolon invulnerabile*, viz., that after all our maritime power is so overwhelming that we could at any rate blockade all our enemy's coasts, and seal up his ports, which would make maritime captures unnecessary. It is superfluous to remark that this idol is in flagrant contradiction with the last, and I would leave them to fight it out between them if I had not particularly examined the subject of blockade in Chapter I.

3. The *eidolon timidum*, or the coward's plea, viz., that, however advantageous to us maritime rights might be, neutral nations would never allow us to exercise them, and therefore it is better to give up with a good grace in peace what we should not be allowed to profit by in war.

I will answer this objection both generally and particularly. Speaking generally, it is a gross reflection on the courage and manliness of our country to insinuate that

England, that knew how to vindicate triumphantly her maritime rights against coalesced Europe at epochs of extreme national difficulty and peril, has no longer the spirit to maintain them in this the heyday of her prosperity, and in the fulness of her strength. If such were the case, *cadit quæstio*, maritime rights are indeed gone, and with them all that is great and glorious in English story.

Examining the matter particularly, the assumption is gratuitous. The game of maritime coalition against England has been played out. Twice, nay three times, it has been tried, and once at any rate under singularly favourable auspices, and each time it came to lamentable grief. The coalesced Neutrals went to war, or threatened to go to war, to secure the carrying trade of the weaker belligerent. Instead of getting it they lost their own. European interests too have changed. Formerly it was considered that England's

maritime interests were in one scale, and in the other the general interests of all Continental nations. The first Napoleon's Continental system was the outcome and the evidence of this belief. It is now seen that it is not at all a question of England's interests on the one side and those of Continental nations on the other, but of *maritime power as such* against all other forms of power, and that Continental nations, *in so far as and just in proportion as* they are maritime powers too, have precisely similar interests to those of England in the matter. It now begins to be pretty clearly seen that France could never have been crushed in the last war by the simple dead weight of Germany's military power, if she had not, some fourteen years before, recklessly signed away her maritime power. The Zollverein has annually some £40,000,000 of produce afloat. Had France sequestrated this property on the first shot fired against her, and put a veto on German commerce

on the ocean, Germany could not have supported the burden of war for six months. Nay, war would never have been declared against her, for Southern Germany, on whom the loss would principally have fallen, would not at such a price have accepted the military hegemony of Prussia. By adhering to the Declaration of Paris France fought Germany with one hand tied behind her back. Her adversary's iron hand was heavier than her remaining hand, but it would have been no match for her if she had been able to put forth her strength in both directions. Providence made her, by geographical configuration and the character of her populations, a maritime as well as a military nation, but she deliberately threw away one half of her natural advantages, and the Capitulation of Paris of 1871 was the first fruits and natural consequence of the Declaration of Paris of 1856. It is perfectly obvious that the interests of *all* maritime nations (England,

France, Denmark, Spain, Italy, and the United States) are identical in this matter, although opposed to those of the purely military Powers, Germany, Russia, and Austria.

4. A new idol has lately sprung up of too modern date to boast of a Latin denomination. It may be called the *sea-lawyers' idol.* It is of the amphibious tribe: it does not belong to the sea because the sea repudiates it; it does not belong to the law because its subject-matter is purely naval. It maintains that modern changes in naval warfare, especially the invention of shells, render convoy no longer possible; that the enemy (no more able, it is true, to *capture* English convoys than formerly) can, in spite of convoy, sink and destroy our merchantmen on the high seas; and it challenges the opinions of naval officers on the subject.

In spite of the well-known aversion of sailors to newspaper controversies, no less

than four admirals* (an unprecedented fact I believe in the history of journalism) respond to the challenge of the sea-lawyer, and pledge their professional reputation to the opinion that the sea-lawyer is entirely mistaken, and that convoy, although the conditions of it are altered, is as feasible now as ever in the history of naval warfare. I have heard naval officers affirm that they would rather fight a frigate than a sea-lawyer; but it must be confessed that, on this occasion at any rate, our admirals have given a very good account of the sea-lawyer in question. *Requiescat in pace.* Powder and shot must be cheap now-a-days!

5. Lastly, we have the *eidolon fraudulosum*, which pretends that, however advantageous to England and maritime nations

* Rear-Admiral Sir F. Leopold McClintock, F.R.S.; Vice-Admiral Sir George Nathaniel Broke Middleton, Bart.; Vice-Admiral W. King Hall; and Admiral Sir Henry Keppel, K.C.B.—Cf. *Pall Mall Gazette, August* 19, 1876.

generally may be the exercise of maritime rights, the weaker belligerent, with the aid of interested neutrals, is always able, by means of "neutralizing" contrivances of various kinds, false papers, bills of sale, clearances, invoices, muster-rolls, &c., to defeat the processes of prize courts and secure immunity to enemies' goods. It is useless therefore, it is said, to maintain in theory a right which in practice cannot be enforced.

This argument is pretty much the same as if one were to maintain that because pickpockets, coiners, burglars, and forgers often escape detection and punishment, therefore police courts, judges, and prisons had better be abolished and their expenses saved. Frauds on a stupendous scale, especially in the war of 1792, no doubt took place. Regular "neutralizing" establishments were founded—no less than fifty of them in the town of Emden alone—and a whole machinery of "neutralizing" con-

trivances was set in action, which reduced fraud to a system and rendered naught the vigilance of our cruisers. But, in the first place, these frauds were rendered possible not by what I may call the Common Law on the subject of maritime capture, but by our complicated and ill-devised Orders in Council, suspending, limiting and qualifying that Common Law, and ought to have been met by a return to the Common Law and the suspension of the Orders in Council. In the next place, they were rendered possible by the want of elasticity in the rules of evidence adopted in our prize courts, and were to be met by a change in that procedure. For instance, the question raised in our courts was not whether a ship's papers were *bonâ fide*, but whether they were *in order*, and the point orally investigated was to ascertain whether the master and crew of the captured vessels swore *in conformity with the ship's papers*, and if that turned out to be the case the

ship was released, however probable it might appear that papers, swearings, and all were false, and the neutrality of the vessel only colourable. It was not difficult to drive a three-decker through such a mode of procedure. Every kind of device was had recourse to in order to bring belligerent property to what was called a "safe-footing." The Standing Interrogatories of the English prize courts became a subject of careful study. A book called *Vraagen en Antwoorden* was published in Holland, suggesting the proper answers to be given to these Standing Interrogatories by masters of captured vessels so as to escape condemnation; and in the ship's papers of a prize taken into Harwich the specific answers which would suit the case of the vessel in question were found jotted down in pencil on the margin of the pages of *Vraagen en Antwoorden*, opposite to the "Standing Interrogatories of the English Prize Courts." These frauds all flourished

conspicuously during the Revolutionary War of 1792, and were, as I have said, called, in a great measure, into existence by the Orders in Council of 1793, 1794, and 1798. In the war of 1803 our prize courts began to see their way to check them, and some of the Orders in Council I have just mentioned were not renewed. Finally, there is a weapon stored in the arsenal of Maritime Rights which can checkmate these frauds, and neutralize even neutralizing ingenuity, viz., prohibiting the importation of enemies' *produce*, and, if necessary, sequestrating it on the high seas.

The fact is, and this the secret of the whole business, it is not an *intellectual* difficulty which opposes itself to the resumption of Maritime Rights. The difficulty is purely moral. The Rights were not abandoned in consequence of the force of the arguments urged for their abandonment. They were first surrendered, and

then arguments were invented to justify the surrender. The fallacies which I have been examining in this chapter are the net produce of this *ex post facto* process. They are a sorry lot after all, and the first maritime people that has the courage to say "*We will* resume our maritime rights," will see these phantom idols, like "gibbering ghosts," disappear in the mists of the ocean.

THE END.

THE MARITIME LEAGUE FOR THE RESUMPTION OF NAVAL RIGHTS IN GREAT BRITAIN.

COUNCIL OF THE LEAGUE. — CHAIRMAN, STEWART E. ROLLAND, ESQ. TREASURER, THOMAS GIBSON BOWLES, ESQ.

THE importance to the British Empire of the retention and the exercise to their full extent of those naval rights founded on the Law of Nature and sanctioned by the Law of Nations, by which alone a maritime country can maintain its power on the seas, must commend itself to all who attach any importance to the existence of their country. The unauthoritative Declaration of Paris of 1856 assumes to abolish those rights, and

Parliament, often appealed to to resume them by an authoritative declaration, has as repeatedly failed to do so.

It is manifest that Great Britain, being essentially a maritime country, must depend mainly for her defence upon the power of waging war effectually at sea. It is equally manifest that war can only be waged effectually at sea by the capture of enemy's property, whether in enemy's or in neutral vessels, and that the full strength of the country can only be put forth by arming and commissioning private volunteer vessels as an auxiliary to the State Navy. The right of any nation to do this is not contested, but by the two articles in the Declaration of Paris which declared that the neutral flag should cover enemy's goods not being contraband of war, and that privateering is abolished, Great Britain is held to be bound to deprive herself of these two weapons of defence, and must remain

deprived of them until that Declaration is authoritatively denounced and the rights resumed, which can only be done in time of peace.

It is apparent, therefore, that a more thoroughly combined and organized action is necessary to obtain the desired result—that of freeing this country from the fetters of the Declaration of Paris—and it is felt that the time has come for uniting in one association all persons of every class who desire that the British Empire should remain a first-class naval Power, and who feel it their duty to work to this end.

The following propositions are laid down, as showing summarily the necessity for action in this matter:—

1. That England, being a maritime country, must depend for her defence upon the power of waging war effectually at sea.
2. That war can only be waged effec-

tually at sea by the capture of the enemy's property.

3. That by the Law of Nations every State when at war has the right to capture its enemy's property at sea, of whatever nature it be and in whatever vessels it is found.
4. That every State has also a right by the Law of Nations to arm and commission private vessels as an auxiliary to its naval force.
5. That the use of this auxiliary force is esential to the effectual capture of enemies' goods, as well as a necessary element in the development of the whole fighting power of the country.
6. That the exercise of the right of seizure and confiscation, whether by State vessels or commissioned private vessels, while it is the most effective, is the mildest and least cruel of all methods of making war.

7. That a document, known as the Declaration of Paris of 1856, nevertheless assumed to abolish this right, and to prohibit its exercise by Great Britain.
8. That an adherence to the rules laid down by the Declaration of Paris would in the event of war immediately deprive Great Britain of the whole of the carrying trade, and drive it into neutral vessels; would deprive her of the power of acting against the enemy's commerce, by enabling it to be carried on in security under the neutral flag, thus rendering naval warfare unnecessary to the enemy, and therefore impossible to Great Britain; and, finally, would deprive her of the power of issuing commissions to volunteer vessels as an auxiliary force to the Navy.
9. That by this Declaration the authority and the position of Great Britain are

weakened in peace, while she is rendered powerless at sea in war; and that unless she withdraws from it in time of peace she will be held bound by it in time of war, not by her enemy alone, but also by the neutral nations who will profit by it.

10. That it is therefore necessary that Great Britain should without delay withdraw from the Declaration of Paris, and declare it not to be binding.

THE SOLE OBJECT OF THIS LEAGUE IS TO PROCURE THE WITHDRAWAL OF GREAT BRITAIN FROM THE DECLARATION OF PARIS OF 1856.

The action of the League will be to spread the knowledge of the subject in every possible way—whether by disseminating that which has been already written

and spoken on it by the most eminent statesmen and publicists; by private and public discussion; by lectures and public meetings; by addresses to Her Majesty, to Her Ministers, and to both Houses of Parliament; or by deputations to influential men.

The subscription to the League is One Shilling per annum, which entitles the subscriber to a card of membership.

A subscription of £1 per annum entitles the subscriber to one copy of all publications issued by the League, and to attend and vote in its meetings.

Subscriptions from two or more persons, amounting to £1, entitles any one of the subscribers, duly delegated by the rest of them for that purpose, to receive one copy of all publications issued by the League, and to attend and vote in its meetings.

Members of the two Houses of Parliament on joining the League are immediately

placed on the list of Honorary Members without payment of any fees.

Those who desire to join the League are requested to communicate with the Secretary at the Office, 31, Essex Street, Strand.

A. H. ATTERIDGE,
Secretary.

OFFICE OF THE MARITIME LEAGUE,
31, ESSEX STREET, STRAND,
LONDON.

RULES FOR LOCAL ASSOCIATIONS

IN CONNECTION WITH

THE MARITIME LEAGUE.

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1. Wherever the Council can find a competent person, it will appoint him Local Secretary, and, whenever a Local Association is formed spontaneously, its Secretary is requested to communicate with the Central Maritime League in London.
2. His duty will be to enrol members, diffuse information, hold meetings, lectures and discussions, correspond with the local representatives in Parliament, and promote petitions on the subject of Maritime Rights.
3. Every assistance will be given by the Council in London for the formation of Branch Associations.
4. Each branch is expected to be self-

supporting. Should it have any surplus funds wherewith to promote the general objects of the League, a communication to that effect can be made to the Secretary in London.

5. Any Local Secretary appointed by the London Council will be responsible to that body for all subscriptions he may receive.

6. In order to preserve unity of action it is desirable that each branch should communicate through its Secretary with the Council in London before presenting any address to Her Majesty or Her Ministers, or any petition to either House of Parliament.